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Re: ADM 2003-22-11, Social Security Benefits

I support this change.

The proposal clarifies the treatment of social security benefits paid to a child on the child support payer's behalf. In Frens v Frens, 191 Mich App 654 (1990) the court held that the child support payer should get credit on his child support for the benefits that the child received from Social Security based on the payer's disability or retirement. The Michigan Child Support Formula Manual has reflected this ruling, but has never addressed whether these benefits should be treated as additional income to the payer.

For example, consider the case where a payer receives \$800 per month in Social Security Disability benefits, and an additional \$200 per month is paid by Social Security to his child. If his income is deemed to be only \$800 per month, his child support would be \$183 per month. Under the holding of Jenerou v Jenerou, 200 Mich App 265 (1993), the \$200 that the child received from Social Security would be applied to the child support, but only up to the ordered amount. The payer would retain all of his \$800 per month in benefits, and the child would receive \$200.

If the \$200 that the child receives from Social Security is treated as part of the payer's benefit, then it would be added to the payer's \$800, and child support would be calculated on \$1,000 per month. Child support at that income is \$266 per month. The payer would be required to pay an additional \$66 per month out of his benefit, leaving him with \$734 per month. This places the payer in the same position as a person who earns \$1,000 per month. A person who earns \$1,000 per month pays \$266 in child support, and is left with \$734.

If the payer was really in the position of someone who earned only \$800 per month, he would not be left with a net of \$800. A person who earns \$800 per month has to pay \$183 per month in child support, leaving him with \$617 per month.

The situation of the payer on social security disability is not unlike the situation of someone who nets \$1,000 per month, but only gets \$800 because \$200 per month is subject to income withholding for child support and is sent to his child. We do not treat him as only earning \$800. The amount sent to his child is included as part of his income.

There are technical arguments suggesting that the \$200 benefit that the child receives is not really attributable as income to the payer. The problem is that those arguments suggest equally that the payer should not get any credit on his child support for that benefit. Frens decided that the benefits should be credited as though paid by the payer, and if he gets that credit the benefits should be included in his income.